

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

ADRIAN MICHAEL FLORES

PLAINTIFF

VS.

NO. 5:17-CV-05063-TLB

**COUNTY OF BENTON, ARKANSAS;
JAMES CHAMBERLIN; BALTHAZAR
MARTINEZ; ANDY J. LEE; DAVID
CORDEIRO; JAMES JOHNSON;
SCOTT SULLIVAN; et al.**

DEFENDANTS

BRIEF IN SUPPORT OF MOTION TO DISMISS

I. INTRODUCTION

Plaintiff filed a Complaint on April 10, 2017. Doc. 1. Plaintiff then filed an Amended Complaint on July 5, 2017 along with a Motion For Extension of Time to File and Obtain Proper Service on Defendants. Docs. 5 & 6. The Court granted in part and denied in part Defendant's Motion For Extension of Time. *See* Text Only Order on CM/ECF Docket. In particular, the Court "grant[ed] Plaintiff an additional 10 days to serve the Complaint beyond the deadline...", or by on or about July 19, 2017. *See* Docs. 5 & 6 and Text Order Only on CM/ECF Docket. Plaintiff served a Summons and Amended Complaint on Benton County Prosecuting Attorney Nathan Smith's office on July 19, 2017. Doc. 11. Plaintiff filed an Affidavit of Service on "County of Benton" on July 21, 2017, confirming the above mentioned service. *Id.*

II. STANDARD

Fed. Rule of Civ. Pro. 4(m) states:

(m) Time Limit for Service. If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a

specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1).

III. ARGUMENT

The Benton County Arkansas Judge is the proper agent for service of process of suits against Benton County. *See Johnson v. Williams*, 2008 U.S. Dist. LEXIS 61322, 2008 WL 3554949 (W.D. Ark. Aug. 12, 2008) (“The County Judge is the chief executive officer of the County, *McCuen v. Jackson*, 265 Ark. 819, 581 S.W.2d 326 (1979), and would be the proper person to be served with Summons for the County.”). Plaintiff served the Benton County prosecuting attorney’s office, not the Benton County Arkansas Judge, with the summons and Amended Complaint. *See* Doc. 11. The summons served on the Benton County prosecuting attorney was directed to “Nathan Smith Prosecuting Attorney for Benton County”, not the Benton County Arkansas Judge. *Id.* Plaintiff did not perfect service of process of a *proper* Summons and Amended Complaint on the Benton County Arkansas Judge by the July 19, 2017 service deadline set by the Court. Benton County is, therefore, entitled to a dismissal pursuant to Fed. Rule of Civ. Pro. 12(b) (4) & (5) and Fed. Rule of Civ. Pro. 4(m). *See* Docs. 5 & 6 and Text Order Only on CM/ECF Docket.

WHEREFORE, Defendant, Benton County, prays that Benton County be dismissed from the case and for any and all other just and proper relief to which it may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will provide notification of the same to the following CM/ECF user:

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